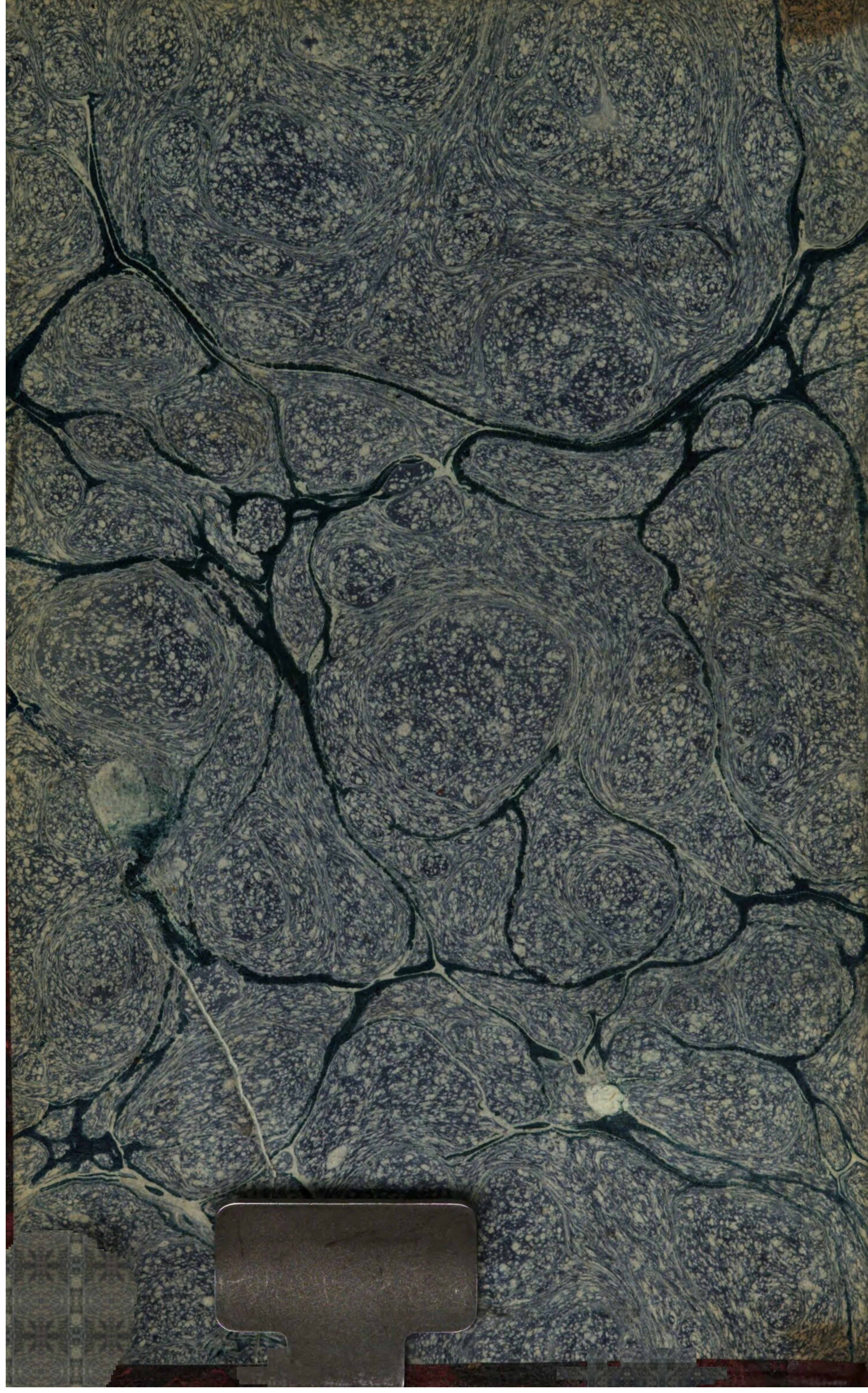


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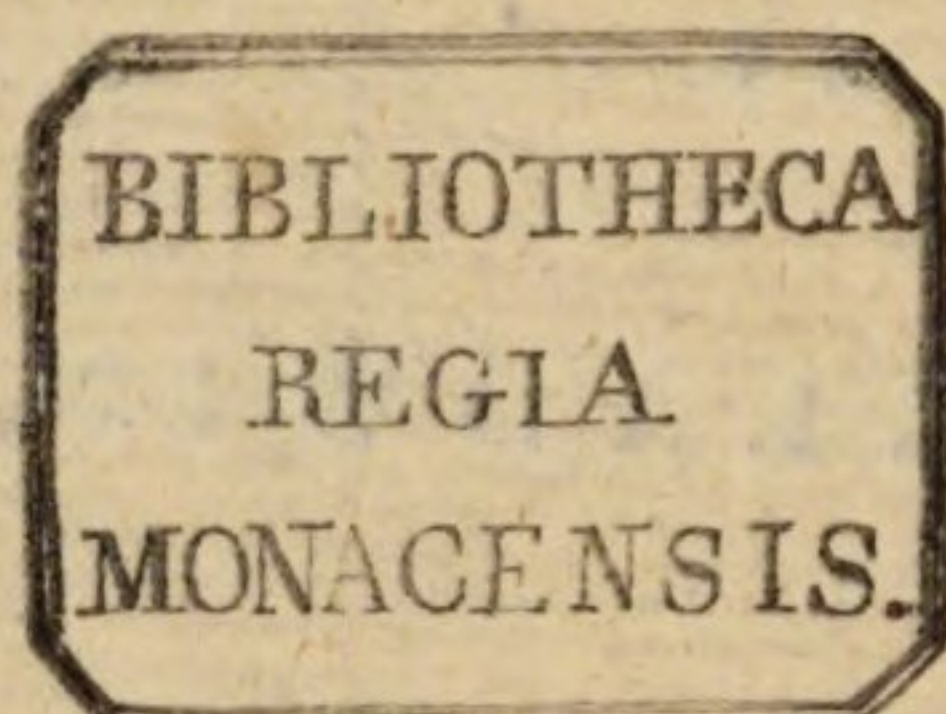
Gladwin

AN
E P I T O M E
OF
MOHAMMEDAN LAW.

TRANSLATED FROM
THE ORIGINAL PERSIAN,

BY
FRANCIS GLADWIN, Esq.

CALCUTTA:
PRINTED BY WILLIAM MACKAY.
M.DCC.LXXXVI.



TO
THE HONOURABLE
SIR WILLIAM JONES,
ONE OF HIS MAJESTY'S JUDGES
OF THE SUPREME COURT OF JUDICATURE
IN BENGAL.

THIS EPITOME OF
MOHAMMEDAN LAW

IS DEDICATED,
BY HIS SINCERE FRIEND,
AND OBEDIENT SERVANT,

FRA. GLADWIN.

CALCUTTA,
MAY 6, 1786.

TO

THE HONORABLE

SIR WILLIAM JONES

ONE OF HIS MAJESTY'S JUDGES

OF THE SUPREME COURT OF BENGAL

IN BOMBAY

THIS EPITOME

OF HIS MAJESTY'S JUDGES

IS DEDICATED

BY HIS HONORABLE FRIEND

AND OBLIGED SERVANT

FRAS. GLADSTONE

EXCUTTED
MAY 6. 1860.

THE following EPITOME is taken from the Mirát ul Miffáyil, which was written in the Persian language, for the use of the Emperor Mohammed Shah.

As it conveys a general idea of the Moham-
medan law, of which we are at present but little
informed, it may prove acceptable to the Publick,
till such time as they shall be favoured with that
noble work the Hedyah, which has been translat-
ed into English by Mr. James Anderson and
Captain Hamilton, under the immediate patro-
nage of Mr. Hastings.

The following persons are listed in the
Index of Names, which are written in the
Persian language for the use of the
Alphabetical Index.

As it respects a general view of the
Persian language, it is not necessary to
refer to it, as it is not a subject of the
Index. It is only necessary to the Index
to give a list of the names which have
been used in the Persian language, and
to give a list of the names which have
been used in the Persian language, and
to give a list of the names which have
been used in the Persian language.

C O N T E N T S.

P A R T I.

S P I R I T U A L S.

	Page
Profession of Faith, &c.	I

P A R T II.

T E M P O R A L S.

Marriage,	- - -	10
Divorce,	- - -	15
Maintenance,	- - -	19
Manumission,	- - -	21
Oaths,	- - -	24
Hud and Tazeer,	- - -	27
Hud for Drunkenness,	- - -	30
Hud for false Accusation,	- - -	31
The quantity of Tazeer,	- - -	32
The correction which a Husband may give his Wife,	- - -	33
Different kinds of Tazeer,	- - -	ibid.
Theft,	- - -	35
		Highway

	Page
Highway Robbers, - - -	37
Foundlings and Strays, - -	38
A fugitive Slave, - - -	40
Partnership, - - -	41
Pious Dedications, - - -	43
Buying and Selling, - - -	44
Selem, - - -	49
Suretyship, - - -	50
Transfer of a Debt, - - -	51
The office of Cazy, - - -	52
Testimony, - - -	56
Attorneyship, - - -	58
Claims, - - -	59
Confession and Agreement, - -	61
Compromise, - - -	62
Borrowing and Lending, - -	64
Gifts, - - -	66
Alms, - - -	67
Hire and Rent, - - -	ibid.
Mekatib Slave, - - -	70
Threatening, - - -	71
Violence and Oppression, - -	73
Huk Shufah, or the Right of Neighbourhood,	75
Agriculture, - - -	76
Killing and Maiming, - - -	77

MOHAMMEDAN LAW.

AN

EPI TOM E

OF

MOHAMMEDAN LAW.

PART I.

SPIRITUALS.

THERE is the following tradition of the Pro-

phet recorded in the Mishkat, as delivered by

Omar Ben Khitab. He said, once, when I was in

company with the Prophet, there entered a man,

whose garment was exceedingly white, and his hair

very black, upon whom there were not any signs of

travel; and there was not one of us who knew him.

He seated himself over against the Prophet, placed

his knees opposite to him, and put the palms of his

hands on his two thighs. And he said, O Moham-

med, inform me of Islamism. Mohammed said,

B

Islamism

Islamism is that you bear witness there is no God but God, and that Mohammed is his Prophet; that you perform your prayers, bestow alms, keep the fast of Ramzan, and perform the pilgrimage of Meca, if you are possessed of the means for going thither. And that man replied, you have said rightly. We were astonished at the person, and at his questions, and belief. He then said, inform me, what is faith? The Prophet of God answered, it is that you believe in God and his angels, his books and his prophets, and in the day of resurrection; and also, that you believe that the distribution of good and evil is made by God. He replied, thou hast said truly. He then said, inform me of righteousness. The Prophet of God answered, righteousness is, that you worship God as if you saw him, because though you do not see him, he beholdeth you. And the man replied, you have said truly: now inform me concerning the resurrection? The Prophet answered, there is no person better acquainted with the manner of the resurrection than he who asks the question. The man said, inform me then of the signs and tokens thereof? The Prophet said, one of the signs of the last day is, that the bondmaid shall bring forth her master. Another token will be that

that you shall behold those who are naked and of low estate, the beggar and the herdsman, vying with each other in the magnificence of their houses. Omar said, when the man was departed, I spent a long time in conjecture: after which the Prophet asked me, O! Omar! knowest thou who this interrogator was? I answered, God and his Prophet are most wise. He replied, of a truth it was Gabriel, who came to instruct you in your religion.

In the Moheet it is written, that every man and woman, who possess not the quality of faith, neither their marriage nor sacrifice will be perfect; seeing that they are both infidels.

The profession of faith is this: I believe in the high God, his angels, his books and his prophets, and in the day of creation, and that the decrees of good and evil are according to his will; and I believe in the resurrection after death: and without knowing these things he shall not be a Moslem, although he saith there is no God but God, and Mohammed is the Prophet of God.

Believing in the high God is, that you confess with your tongue, and believe in your heart, that God is single, hath no companions, that no one is like unto him, and that he is eternal, and whatever is, besides himself, is of his creation. All the attributes of God, such as Omniscience, Immortality, Hearing, Seeing, Willing, Omnipotence, Speech, and his Essence, are from eternity; and the attributes are fixed in the nature of God.

Believing in the angels is, that you believe the angels to have been created by God, that they are free from sin, are always obedient, and never err in the performance of any commandment. Some of them are of light, and some of fire; and they are exempted from the wants and the lusts of the flesh. Some are cherubins, as the chief, Gabriel, who is the messenger between God and all the Prophets who receive revelations; and the chief, Michael, who is the angel that presides over rain, and in his hand are mercy and the distribution of daily sustenance: and the chief, Israfil, who is master of the trumpet, for the blowing of which he waiteth with impatience. He will blow twice. At the first sound all the living creatures in the universe will die; and at the second
blast

blast they will all be restored to life. And between each blast there will be an interval of forty years. And the chief, Uzriel, who is the angel of death, seizing the souls and destroying all living creatures by the will of God.

Believing in the books of the Lord is, that you believe the books which the Lord hath sent unto his Prophet, are all of them true and just. And of this number four are books, and the rest leaves. Of the first is the Pentateuch, which was sent to the chief, Moses; the Evangelists, to the chief, Jesus; the Psalms, to the chief, David; and the Koran, to Mohammed Mustafa. And the knowledge of the beginning and of the end are in the Koran; all its ordinances shall remain until the consummation of all things, and shall not be abrogated.

Believing in the Prophets is, That you believe that all the prophets are the messengers of God to men; to instruct them in the ordinances of the law, and in a knowledge of a future state. And they are free from great and from small sins, after being raised up. But some of them, previous to their being raised up, had, through forgetfulness, fallen

fallen into small errors; and these are called stumblings, or unintentional slippings of the foot, in the same manner that a person carrying a burthen slips with his foot, without designing it.

All the prophets are more excellent than the rest of mankind; and Mohammed is the most excellent of all the prophets.

And you must believe that a prophet is more excellent than a faint, because a man becomes a faint by being subservient unto a prophet: so that if a faint acts in opposition to a prophet, in word or deed, he becomes an heretic; and an heretic is not endowed with sanctity. An heretic is he who does that which is contrary to the actions of the companions of the prophet of God.

Also believe, that the best of all the faints and Imams is Abubecre; then Omar, then Othman; and next Ali. And every person who doth not believe this goes astray, and is an heretic. And whosoever denieth the legality of the Khalifat of all the four, in the order mentioned above, goes astray.

Be-

Believing in the punishment of the grave, and the questioning therein, is, That you believe the punishment of the grave to be the just punishment for obstinate sinners; and that the questioning therein is also just. There is the following tradition from Bara Ben Azib: He related that the Prophet said, I call him an Islamite, who, on being questioned in the grave, beareth witness that there is no God but God, and that of a truth Mohammed is his Prophet. This is supported by the word of the Lord: "The Lord will establish them who have had faith in the true word, in the life of this world, and in the life to come." And there is a tradition that the Prophet said, The Lord confirmeth them who have believed in the word revealed, regarding the punishment of the grave.

They shall ask him, Who is thy providence? and he shall answer, My providence is the Lord, and my prophet is Mohammed. This is an opinion universally received.

There is also a tradition from Ayesha, that a Jewess came to her and enquired regarding the punishment of the grave. She answered, God defend you
from

from the punishment of the grave! Then Ayesha asked the Prophet concerning it, who said, yes, the punishment of the grave is certain. Ayesha replied, O Prophet of God! do I not always hear you after every time of prayer, implore protection from the punishment of the grave? And this is also a tradition generally believed.

Believing in the day of resurrection is, That you believe the resurrection will be, and that heaven and earth will be destroyed. Then the Lord of might and glory will restore to life the people of heaven and of earth, and bring them to the plain of judgment. He will call to account eighteen thousand worlds. To the orthodox he will assign different degrees of bliss in Paradise, according to their merits. The sinful believers who have died without repenting, if he chooses to favour them, he will send them to Paradise without the torments of hell; or if he pleases he will punish them, and cleanse them from their sins, after which he will bring them out of hell, and send them to Paradise; and this is justice. The infidels he will commit to hell, where they will always remain in violent torments.

The

The orthodox will be immortal in Paradise, with everlasting blessings; and, in like manner, the inhabitants of hell will never die, but continue in everlasting, unremitting torments.

Believing in the decrees of good and evil is, That you believe that whatever there is in the world, of good and of evil, is according to the decree and will of God. But the Lord is pleased at the doing of good, and displeased at the doing of evil.

If they ask you, whether is faith created or uncreated? answer, That, according to the opinion of some of the learned, faith is uncreated, because that faith is the gift of God; and God's gift is one of his actions: and an action of God is not created: therefore faith is not created. According to the opinion of others among the learned, it is created: because that faith signifies affirmation, or confession, which is the action of a servant; and the action of a servant is created: therefore the faith of a servant must also be created; and this last opinion is the best *.

* In this Part the Translator has omitted several chapters of uninteresting ceremonies, some of which contain descriptions too indecent to appear in English.

AN
EPI TOM E
OF
MOHAMMEDAN LAW.

PART II.
TEMPORALS.

MARRIAGE.

IT is written in the Koran, "Take in marriage,
" of such women as you please, two, or three, or
" four ; but if you fear that you cannot act equi-
" tably, then marry only one, or the slaves which
" you shall have acquired."

There is this tradition from Anis. There came
three sycophants to the wives of the Prophet, and
enquired of them concerning the Prophet's manner
of worship. When they were informed thereof, they
made light of it, saying, what distance is there be-
tween us and the Prophet, that God should pardon
all

all his offences? One of them said, I pray every night; another said, I fast every day; the third said I neither know woman, nor marry. Then the Prophet coming in, said unto them, ye are of those who say thus, and thus; yet I swear that I fear the Lord more than you do, and observe greater abstinence; but I fast, and sometimes omit it; I pray and I sleep, and I take wives in marriage. And whosoever doth not conform to my ordinances, belongeth not unto me.

Marriage is commanded by the Prophet, although there be not any desire; and if there be, then marriage is an indispensable duty. It should be performed in the presence of two free men, or of one free man and two free women, Moslems, who are sound in mind, and of the age of discretion.

It is not lawful for a man to marry his mother, nor his mother's mother, and higher; nor his father's mother, and higher; neither his daughter, nor daughter's daughter, and lower: and it is unlawful to marry his own sister, or her daughter, or his brother's daughter. And you are forbidden to marry your aunts, both on the father's and the mother's side; and your wife's mother, and your daughters-in-law,

unto whose mothers you have gone in ; but if you have not gone in unto the mother, the daughter is not forbidden. And you are forbidden to marry the wives of your father and of your son, and the women who have given you suck, and your father's sisters. And it is unlawful to marry two sisters, unless one sister die or is divorced ; after which the second sister may be taken to wife. In like manner you are forbidden to go in unto two slaves who are own sisters, unless you sell one or make her free.

Marrying for a stated time is also forbidden, which is when the man says to the woman, " I take thee for such a time with such possessions ;" although in the time of the Prophet, and until three days before the conquest of Mecca, this was an indifferent matter ; but it was prohibited from that period.

If a man who is an infidel be married unto a woman, who is also an infidel, according to the established ceremonies amongst them, if they afterwards both embrace Islamism, a second marriage is not necessary.

If a man says to a woman, " Thou wert my wife ;" and she answers, " I was your wife," the marriage shall

shall not be good from these words. But if he says, "Be thou my wife," and she answers, "I am become thy wife," and the man replies, "I agree to it," in the presence of two witnesses, who are free men, the marriage is good.

If a man asks another, "Did you bestow your daughter on my son?" and he answers, "I bestowed her," the marriage is good.

If a free woman, who is sound in mind, and arrived at maturity, shall of her own accord, and before two witnesses, consent to marry a man, that marriage is good, although it be contrary to the will of her guardians.

If the guardian of a virgin, who is sound in mind, and arrived at maturity, asks her permission to give her in marriage, and she is silent; or if after the marriage she is apprized of it, and remains silent, this is to be considered as a consent to the marriage.

Equality in marriage is most reputable. Equality is in person, wealth, religion, country, quality, and profession; therefore, if a woman marries out of
her

her rank, without the consent of her guardians, it is lawful for them either to dissolve the marriage, or let it stand.

Marrying a man slave, or a female slave, without the consent of their master is prohibited. If the master consents to the marriage, it shall be good; but if he doth not consent, it is not lawful.

The smallest dower is ten lawful direms; if fewer than ten, such direms are named at the time of marriage; yet those ten direms are indispensable.

If a wife or a husband embraces the faith, and on proposing it to the other, he or she unites in it, the intention is answered, and their marriage shall remain firm. But if the other disobeys, and does not embrace Islamism, they shall be separated.

If a woman has for her *mehr* a hog, or wine, such dowers are good.

Whosoever hath more than one wife, it is proper that he maintain each of them alike, making no difference between the new and the former wife.

But

But the husband is at liberty to take with him on a journey whichsoever he pleaseth; however, casting of lots, which was the Prophet's way, is the best.

D I V O R C E.

As it is in the Koran, "Ye may divorce your wives twice, and then either retain them with humanity, or dismiss them with kindness."

Telak (divorce) in law, signifies the removal of an obligation which had been imposed by marriage.

To utter one divorce during one purification, in which he has not gone in unto her, and not repeating the divorce till her customs are past, is most commendable. Uttering three divorces during one purification, or three divorces in one word, or uttering divorce during the time of her courses, is an heresy. If he speaks it after this manner, he is a sinner. To utter three divorces during three purifications

cations is most commendable; and this kind of divorce they call *Telak sunnet*. And after every such three kinds of divorce, a second marriage is necessary: and without a second marriage it is not lawful for the husband * to take her again: and this is the Fetwa.

Divorce is of two kinds; one they call *Seryh*, which is when the word *divorce* is spoken, such as when he saith I divorce you; or he saith, You were divorced; or he saith, I have declared you divorced. Then one *Telak rajaey* shall take place.

Telak rajaey they call that wherein if, without marriage, within the term, he returns to her and is reconciled, it shall be lawful, so long as he has not spoken three divorces. *Telak kenyit* is when he speaks ambiguously, and does not utter the word *divorce*; as when he saith to his wife, Go, set out your term; or he saith, Be delivered; or he saith, You are separated from me; or he saith, You are *haram* (or prohibited) to me; or he saith, You are

* That is, after the third divorce it is not lawful for him to take her again till she has been married and bedded by another man, and divorced by such second husband.

loathsome to me; or he saith, I have separated you; or he saith, Seek another husband; or he saith, Join your own family; or saith, Arise: if in these words he had not the intention of divorce, no divorce shall take place.

The ordinance regarding *Telak bain* is, that as long as she does not perform a new marriage, it is not lawful for him to go in unto her, either during her term, or after her term. And in the *Telak rajaey*, it shall not be lawful for him to be reconciled to her after her term, without marriage.

If a wife says to her husband, Divorce me, and the husband says, Take it as given, or Take it as done; or he says, Let it be given, or Let it be done, it shall be for one divorce, if he hath the intention of divorce. If, under this description, the husband saith, It is given, or, It is done, it shall be one divorce, without the intention. In like manner if he saith, Think that it is given, or, Think it done, it shall be one divorce, although he had no such intention.

If a man says to his wife, Perform the artifice of women, it is an agreement of divorce. And three

divorces shall take place, if he has the intention of divorce. But if he saith, Perform your arts of divorce, it is of no consequence.

If a man hath four wives, all of whom are pregnant, and he saith, Excepting her who shall bring forth, the rest shall be divorced. Upon one of them being delivered of a child, the other three women are divorced once, and she who was delivered is not divorced. Then if another is delivered, she shall be once divorced, and the two last women are twice divorced. Then when the third shall be delivered, the fourth, who is not brought to bed, shall be thrice divorced; and those three women, who have brought forth each of them, shall be twice divorced. Then when the fourth brings forth, they shall every one of them be thrice divorced.

If a woman hath incurred a divorce *rejaey*, it shall be allowable for the husband to make a peace, either by kissing her, or embracing her, or going in unto her, although the woman is not willing to be reconciled.

If a man divorces his wife thrice, it is not lawful
for

for him to take her again without a second marriage. A second marriage is, when, after having past the term for her first husband, a second husband doth marry and consummate with her, and then divorces her, after which she passes another term, and then it is lawful for the first husband to marry that woman again.

M A I N T E N A N C E.

As it is in the Koran, "And whatever alms you shall give, or whatever vow ye shall vow, verily God knoweth it; but the ungodly shall have none to help them. If ye make your alms to appear, it is well; but if ye conceal them, and give them to the poor; this will be better for you, and will atone for your sins: and God is well informed of that which you do."

It is incumbent on a man to maintain his wife according to their rank; or, in other words, if they are both rich people, an ample maintenance is indispensable; and if they are both poor, a scanty allowance is

required; and if the wife is poor and her husband is rich, in this case it is necessary to allow a maintenance greater than what is given by a poor person, and less than that given to a rich person.

A disobedient wife has no right to a maintenance. In like manner a little girl who is too young for marriage, or a woman who is confined by another for debt, or a woman whom another has taken away by force; or a woman who has gone to perform the pilgrimage to Mecca, without her husband, has no claim to a maintenance.

If a woman refuses to have connection with her husband, on claim of her dower, they do not call such an one disobedient; and a maintenance shall be incumbent. If the husband has not the present means for affording maintenance, the judge shall order the woman to borrow and maintain herself; and when the husband shall have acquired money, he shall pay her debt.

It is incumbent on a man to allow a maintenance to a slave, or a beast that is his property; and if he does not give it, such slave shall advertise the
the

the judge thereof that he may sell him. It is also from hence, that it shall not be allowable for domestics, guests, animals, captives, or slaves, to be idle.

It is incumbent on a father to maintain a son during his minority ; and it is likewise his duty to support an adult son, who is a cripple : a cripple is he whose hands, or feet, are useless, and who cannot work. And in like manner it is incumbent on a father to maintain a poor son, who is learning a profession. This tradition is in the Shereh Tehawy.

It is incumbent on those who are rich to maintain their fathers and mothers, grand-fathers and grand-mothers, if they are unable to work. And it is the duty of a person who is rich to support all those who are uterine relations on the mother's side, provided they are poor, and unable to work.

M A N U M I S S I O N.

○ Abu Herarah reports that the Prophet said,
 “ Whosoever manumits a Moslem slave, the Lord
 “ will in return deliver limb for limb of the free man
 “ from

“from hell fire.” This tradition is generally received.

Emancipation by a master who is free, of sound mind, and arrived at years of maturity, is good.

If any one says to his slave, Thou art free; or he saith, You have been set at liberty; or he saith, I manumit you, he shall be free, although he has not the intention of granting his freedom. But if he saith, I have no property in you; or he saith, I have no claim on you; or he saith, You are out of my property, provided he has the intention of manumission, he shall be free; but without the intention, he shall not be free.

If a man says of his slave, This is my son, or This is my father; or he saith of his bond-woman, This is my mother, or This is my daughter; or This man is my master; or he saith, O free man, they shall thereby be free.

If he saith to a slave, O my brother! or saith, O my son! or, I have no power over thee, he shall not thereby be free.

A child is subject unto the law of his mother in the right of property and of manumission; of *Medebir*, of *Um Walid*, and of *Ketabet*; that is to say, if the mother is a slave, the child shall also be a slave; and if the mother is free, the child is also free; and if the mother is *Medebir*, the child is likewise *Medebir*; and if she be *Um Walid*; or the mother of a child, the child shall be like unto her; and if the mother is *Mekatibeh*, the child is also *Mekatibeh*: but in the right of descent, the child is subject unto his father.

When the master says to his slave, If I die you are free, such a slave is called *Medebir*. It is lawful to go in unto such a bond-woman, and to make her do service as long as her lord is living. If the master dies so poor that he leaves not any property besides this *Medebir*, she shall be free in the third of her price, shall work for the two remaining thirds, and give the produce to the heirs. If the master died insolvent, having worked for her full price, she shall give the produce to the creditors.

It is not lawful to sell or to give away a *Medebir* to any one. *Mekatib* is, when the master saith to his slave, Give such a sum of money and be free; such

such a *Mekatib* is out of the service of his master, but shall remain his property till the money is paid.

It is not lawful to sell or give a *Mekatib* to any one; neither is it allowable to go in unto such an one.

Um Walid, or the mother of a child, is when a bond-woman hath a child by her master. So long as he lives, it is lawful for him to employ her in service, to go in unto her, and to give her in marriage to another. When the master dies, she is free in her full price; the heirs and creditors having no power over her.

O A T H S.

According to the verse of the Koran, " God
" will not punish you for an inconsiderate word
" in your oath; but he will punish you for that
" which your hearts have assented to: God is
" merciful and gracious."

If a man makes a false oath in regard to time past, such as, swearing "by God on such a day " I did, or said, such a thing," and in truth he hath not done or said so, he shall be a sinner; and it is necessary that he be penitent and ask forgiveness; but an atonement is not absolutely necessary: and this is called perjury. If he swears from conjecture, so that he saith, "by God such an one is alive," and it happens that he is dead, nothing is necessary, and he is not a sinner; this being an inconsiderate oath."

If he swears regarding the time to come, so that he saith, "by God I will do to a person after this " manner, or I will not do it;" in this case if he doth not fulfil his oath, expiation is necessary; this being a binding oath.

The expiation of an oath is releasing a slave, or, if he possesseth not such ability, giving ten Dervishes twice their bellies full of victuals, or bestowing on ten beggars as much cloth as will cover their nakedness; and if he is not able to do any of these things, he shall fast three days successively.

If a Moslem swears to commit a crime, so that

E

he

he saith, " by God I will kill such an one ; or I will
" speak evil to him ; or I will seize his property ; or
" I will molest my mother or father : " or if he says,
" I will trouble such a teacher," it is necessary that he
break his oath ; but he is a sinner, and shall make
expiation.

If he saith, " the unlawful things of God are
" lawful unto me if I do such a business ; " or he saith,
" whatever I take in my right hand is lawful unto
" me, if I do such a business ; " if he does not fulfil
his oath, one *Telak Bain* shall ensue.

If he takes an oath, and joins to it the words, " If it
" please God," it is not incumbent on him to fulfil the
oath.

If he swears, " I will not eat fruit," he shall not be
a sinner by eating grapes, pomegranates, dried
dates, or cucumbers ; but by eating musk melons
he shall be a sinner.

If he swears, " I will not eat any thing along with
" my bread," he shall not be a sinner by eating flesh,
eggs, or cheese : but according to one tradition, he
shall be a sinner by eating flesh : and according to
another,

another, by eating cheefe, vinegar, salt, and olive oil, he shall be a finner.

If he swears, " I will not sit upon the ground," and he spreadeth a mat, or carpet, on the ground, and sitteth thereon, he shall not be a finner. And in like manner, if he swears, " I will not sleep on this bed," and spreadeth over it another bed, and sleepeth thereon, he shall not be a finner. Also if he swears, " I will not sit on this plank," and placeth another plank upon it, and sitteth thereon, he shall not be a finner.

HUD * and TAZEER †.

As it is in the verse of the Koran, " The whore
" and the whoremonger shall ye scourge with one
" hundred stripes : and let not compassion towards
" them prevent you from executing the judgement
" of God."

* Hud is the punishment prescribed for particular offences, either by the Koran or the Sonna ; and which it is incumbent on the judge to inflict, for the sake of God.

† Tazeer, is the chastisement inflicted at the discretion of the judge, which, however, is limited to a certain number of stripes, as will be found hereafter explained in the text.

Awhoremonger is he who goeth in unto a strange woman, or in other words, one who is not in any shape his property; but if a father goes in unto the bondwoman of his son, *Hud* is not incurred.

In the *Hud* for adultery, four witnesses are required, or else that the adulterer do make confession in four different assemblies.

The judge must ask the witnesses, "What is adultery? and, After what manner is it committed? When and by whom has it been committed?" If the witnesses say, "we saw such and such persons *rem in re*," the adultery is proved.

And the judge must question the adulterer in like manner, even if he makes confession.

If the adulterer and adulterers are *Mushen*, they shall carry them to the desert, and stone them. If the adultery has been proved by four witnesses, the witnesses shall throw the first stones, next the judge, and then the people. And if the adultery has been proved by the confession of the adulterer, then the

Imam

Imam shall throw the first stone, and after him the people.

If the witnesses retract, and do not throw the stones, the punishment shall not be inflicted.

In stoning a woman, let them bury her up to the breast, in a sitting posture, and then stone her. If the adulterer and adulteress are free, though not *Musken*, smite them with one hundred stripes, and don't stone them; and if they are slaves, smite them with fifty stripes.

Musken is a person who is free, of sound mind, adult, and a Moslem, who has been properly married to a woman, and gone in unto her, and they have both continued under the description of modest people.

If a pregnant woman merits *Hud*, they shall not inflict it till she hath been delivered, and hath undergone the necessary purifications. If she merits stoning, then after she has been delivered, and has undergone the necessary purifications, they shall stone her.

HUD *for* DRUNKENNESS,

Omar asked advice regarding *Hud* for wine; and Ali said to him, " I saw the Prophet smite with eighty stripes whosoever was intoxicated with wine, and spoke idly." Then Omar inflicted eighty stripes; this tradition is from Malek.

If wine is drunken with desire and avidity, smite a free man with eighty, and a slave with forty stripes. If he tastes only a single drop of wine he merits *Hud*, although he be not intoxicated.

For drinking the spirituous liquors of this country *, if he be intoxicated, *Hud* is indispensable; and if he is not intoxicated, it merits not *Hud*, chastise him.

The proofs of intoxication are, that he cannot speak rightly, nor can tell man from woman; and some say intoxication is, when his feet slip, and he cannot walk firmly.

In the conviction of a person of Drunkenness, to inflict *Hud* there are required the evidence of two men who are Moslems, adult and of sound mind;

* That is, any spirit excepting what is obtained from grapes.

or the confession of the drunkard; but if after the smell of the liquor is gone, they bear witness against him, or he confesseth, the charge is not established.

HUD *for false* ACCUSATION.

According to the verse of the Koran. “Who-
“soever accuseth a modest person of adultery, and
“is not able to establish the charge by the evidence
“of four witnesses, let them smite him with eighty
“stripes.”

If any one falsely accuses of adultery a free man or woman, who are adult, and Moslems; after proof, they shall smite him with eighty stripes if he be a free man; and if he be a slave, with forty stripes, and they shall never again hear his evidence.

If a person confesseth that he has accused another falsely, and publicly retracts his evidence; or the person whom he hath accused forgiveth him, yet *Hud* shall not be dispensed with.

If any one gives opprobrious language to a Moslem,

lem, examine if it has been said unto a learned or great man, in which case chastise the speaker; but if it has been said unto an ordinary person, then reprimand the offender only, without inflicting *Tazeer*.

The Quantity of TAZEER.

The greatest *Tazeer* in the opinion generally received, is thirty-nine stripes, and the least three stripes, after which the judge shall imprison if he sees fit; but according to Imam Abu Yusef Cazy, the greatest *Tazeer* is seventy-nine stripes.

The stripes of *Tazeer* are severer than those given for *Hud*: when any one dies under either of those punishments, it is to be considered as an accident.

THE *Correction which a HUSBAND may give his*
WIFE.

It is lawful for a husband to correct his wife for not performing her prayers; for omitting certain ablutions,

ablutions; for neglecting her dress; for not complying with his demands; and for going abroad without his permission.

And in like manner it is lawful for a master to punish his slave for an action that merits *Tazeer*; but it is not lawful to inflict *Hud* without permission of the judge.

In the *Sherh Tehawy* there is a tradition, that *Tazeer* is of four kinds: 1, *Ashref-ul-Ashraf*; 2, *Ashraf*; 3, *Awfal*; 4, *Irazil*.

Tazeer Ashref-ul-Ashraf, for learned men and Syeds. When such an one commits an action that merits *Tazeer*, the judge must send information to his house, saying, "I have received advice of your having committed such an action." This is the *Tazeer* for these; it is not expedient to bring them into a court of justice.

Tazeer Ashraf, for monks and dervishes. When these commit an action that merits *Tazeer*, the judge must summon them, and speak to them harshly.

Tazeer Awfal, for soldiers or merchants, and such like. When they commit an action that merits *Tazeer*, the judge shall summon them, speak to them harshly, and imprison them.

Tazeer Irazil, when the offenders are people of the market, and such like, the judge must summon them, speak harshly to them, and imprison them longer.

In the *Khelasset ul Fetawa* it is written, That it is allowable to commute the punishment of *Tazeer* into a fine, if the judge, or the master, sees fit. From hence it is, that if a man be not present at the prayers of the congregation, it is lawful to punish him by a mulct.

In the *Zekheera* there is a tradition, That whosoever is found in a suspicious place, or in the company of offenders, *Tazeer* shall be inflicted on him, though he was not engaged in the guilty action.

In the *Fetawa Serajy* is a tradition, That whosoever turneth away from the doctrine of *Abu Hanifah Cufy*, and makes choice of the tenets of *Shafei*, shall

shall be chastized. Also whosoever smites a Moslem with the palm of his hand, or pulls the turban from off the head of a respectable person, shall be punished with ten stripes.

T H E F T.

According to the verse of the Koran “ If a
“ man or woman steal, cut off their hands in re-
“ tribution for that which they have committed.
“ This is an exemplary punishment appointed by
“ God ; and God is mighty and wise.”

A man or woman, who is of sound mind and adult, is called a thief, when he or she clandestinely takes away from a place of safety ten lawful direms, or a thing to that value or more.

When a theft is proved on any one, either by confession, or on the evidence of two witnesses ; then after that the prosecutor has proved his claim, previous to the restoring of the stolen thing, they shall, in the presence of the prosecutor, cut off the thief's right hand from the wrist, and sear the arm in oil. If he steals a second time, and it is proved, they shall cut off his left foot. And if

he steals a third time, and it is proved, they shall not amputate any more members, but imprison him till he repents.

For stealing earthen ware, beams out of a roof, ebony, sandal wood, an emerald or a ruby out of a ring, or a chrysolite, or pearl, or a little slave, or an account book, they shall not cut off the hand.

And for a theft committed by a relation by blood, or by an intimate friend, or a wife from her husband, or by an husband from a wife, or by a slave from his master, they shall not cut off the hand.

Neither shall they mutilate any one for stealing grass, reeds, wood, fish, fowl, game, arsenic, roses, lime, moist fruits, fruits from the tree, milk, flesh, un-reaped crops, wine, a lute, chess-board and men, a drum, kettle-drum, harp, flute, trumpet, a Koran, or a winding sheet from a corpse.

Neither for stealing from a mosque, or from plunder; and stealing from a little girl who is free, although it be her ornaments, they shall not cut off
his

his hand; nor for stealing a dog, or a leopard, or a lion.

The thief's hand shall be cut off, at the suit of the prosecutor, although himself had obtained the goods by force, or had been a trustee. A trustee they call him with whom a thing is deposited.

If the thief proves that the thing which he has stolen, was by right his property, they shall not cut off his hand; nor if the thing is of less value than sixteen lawful direms.

H I G H W A Y R O B B E R S.

As the Lord hath said, " This is the reward of
" those who war with God, and with his prophet,
" and increase strife on the earth, kill them, and
" crucify them, and cut off their hands and their
" feet, on opposite sides, so that not one of them
" remain on the face of the earth: for of them is evil
" in this world, and for them is great punishment
" in the world to come."

If a highway robber steals the property of any
one,

one, when they seize him they shall cut off his right hand and left foot. And if he has committed murder, they shall also put him to death. Even if the nearest of kin to the murdered person forgives him, he shall not be pardoned. And if he has killed any person, and seized on his property, put him to death; or else let him be crucified alive for three days, after which, rip up his belly with a spear, or with an axe, so that he die quickly.

If a person strangles another within the city, or commits murder in any shape, he shall likewise be put to death in the same manner as the highwayman.

FOUNDLINGS *and* STRAYS.

There is the following tradition from Iyas Eln Kimar. “ The prophet said, whosoever finds a lost
 “ thing, it is incumbent on him to bear witness
 “ thereof before one or two just men, saying, I
 “ have found this thing. He shall not wear nor
 “ hide the thing that he hath found; and if he
 “ discovers the owner he shall restore it. But if he
 “ cannot discover the owner, it is God's property,
 “ and

“ and he shall give it unto whosoever stands in
“ need of it.”

If a dropt child is found in a situation where its life is in danger, it is an indispensable duty to take it up and nourish it; but if there is no fear of its perishing, it is a matter of choice.

A foundling is a free man; his necessary expenses must be defrayed from the royal treasury; and the crown is heir to his estate.

If any one claims a foundling, saying “ he is my son,” he shall be his son, without further evidence; but if he pretends that he is his slave, he shall not be so without further proof.

If any one finds a dropt thing (which is called a stray), it is necessary that he enquire out the owner, and send it to him. If the proprietor thereof be not found, he shall bestow it in alms. If the finder is poor, let him employ the thing to his own use: or if his wife, or his sons, or his mother, or his father are poor, it is lawful that he bestow it on them.

If

If there be lost a slave, or a horse, or an ox, or a sheep, or any other animal, if any one finds it, and sustains it with his meat and fodder, the owner shall pay the price of the meat and the fodder, provided they be given by the permission of the Cazy; but if they have been given without the permission of the Cazy, it is not necessary for the owner to pay any thing.

A FUGITIVE SLAVE.

If any one bring back the fugitive slave of another from the distance of a journey*, the master shall pay him forty lawful direms; and if he bring him from a less distance it is necessary that he be paid in proportion. The ordinance regarding a *Medebir* and *Um Walid* is the same as that concerning a fugitive slave.

If a slave runs away from the person who was bringing him back to his master, provided at the time of seizing him he had declared before witnesses, "This is the slave of such an one; I have seized him in order to send him to him," he shall not

* Three days travelling is called a journey, reckoning 10 fars for a day's journey.

be responsible ; but if at the time of apprehending him, he did not take witnesses, he shall be answerable.

It is incumbent on the master to pay whatever has been expended for the maintenance of a slave in bringing him back.

If a man is missing, and there are no accounts of his being alive or dead, it is necessary that the chief magistrate wherever it happens, do appoint an intelligent and trusty person to take charge of his effects, and maintain the wife and children.

It is not lawful that a separation shall take place between the absent man and his wife before the expiration of ninety years. And this is a most authentic tradition.

PARTNERSHIP.

Partnership is of four kinds. The first they call partnership in property, such as two persons being proprietors of one thing in the way of inheritance,

G

or

or by purchase; and the ordinance regarding this partnership is, that each partner shall be a stranger to the share of the other, and shall not usurp it.

The second they call partnership in company, or unrestricted partnership, such as when two persons say, "We are partners in little or in much," and whatever there shall be of gain in money, or "in kind, or in credit, shall be equally divided "between us." The ordinance for this kind is, that each shall be the representative and surety for the other. And the stipulations of this partnership are, that they shall be equal in property, in possession, and in debt.

Partnership in company shall not be lawful between a slave and a free man; nor between a child and one who is adult; nor between a Moslem and an infidel.

The third they call restricted partnership, such as when two persons are partners, and they stipulate that they shall be alike in profit, but not in estate; or that they shall be equal in estate, but not in profit. And the ordinance regarding this partnership

ship

ship is, that each shall be the representative of the other in profit, but that the one shall not be surety for the other.

The fourth they call professional partnership, as when two taylors, or two dyers, and such like, are partners, on condition that each shall be partner in the work of the other. The ordinance regarding this kind of partnership is, that whatever is gained by their business, shall be equally divided between them.

Partnership in gathering sticks; or in cutting grafs; or in taking game, is not lawful.

P I O U S D E D I C A T I O N S.

Wekf (or dedication), is when the proprietor of ground, or of any thing saith, " These I have dedicated; or whatever profit shall accrue from them, " I bestow in alms."

Wekf shall not be complete till the proprietor of the thing hath separated it from his estate, and delivered it over to the procurator.

If any one founds a mosque, or separates the ground thereof from his estate for the mosque, and gives leave for people to pray therein; then if one person prays in it, it becomes a mosque, and no longer appertains to his estate.

BUYING *and* SELLING.

A sale is complete when a person says, "I sell this thing," and another says, "I buy it;" and if the thing is given from hand to hand, and the price is taken, and the buyer and seller say nothing, the sale shall be good. In like manner, selling grain in a heap without weight or measure, is lawful.

In selling a house, the keys and the foundation of the house, shall be included in the sale, although at the time of sale they were not mentioned. But in selling land, the harvest is not included, unless it was stipulated in the sale. And in like manner in the sale of a tree, the fruit then upon it is not included, unless particularly agreed for.

The hire of the measurers of grain, and others
employed

employed in that business, is to be defrayed by the feller. The hire of persons who try money, and weigh gold and silver, and such like, is to be defrayed by the buyer.

The power of giving or receiving back in sale is allowable till the expiration of three days, if the feller or buyer hath stipulated it.

If a man buys a thing unseen, and immediately when he sees it, wants to return it, it shall be allowable for him so to do. But if a man sells a thing unseen, it is not allowable for him to take it back again upon seeing it.

The purchase, or the sale, made by a blind man is good when he hath felt the thing with his hand, or hath covered himself with it; and in like manner if he hath tasted victuals, he ceases to have the power of returning them.

If any defect is discovered whilst a thing is in the house of the feller, it is lawful that the buyer reject it, and take back the full price.

If

If any natural defect is discovered in a slave, immediately after he is bought, he may be returned.

If a person buys a piece of cloth, without seeing it, and tears it, and makes it into cloaths, or dyes it, and wears it; or if flower is bought, and is moistened with oil, after which a fault is discovered; in these cases, the feller shall lessen the price, and the thing shall be kept by the buyer, unless the feller is willing to take the thing again.

It is not lawful to sell carrion, or blood, or pork, or wine, or a free man, or the mother of a child, or a *Medebir*, or a *Mekatib*, or fish in the water, or birds in the air, or milk in the dugs, or pearl in the shell, or wool on the back of the sheep, or an arrow in the quiver, or the grass that grows round a town, or bees, or woman's milk, or human skin, or hogs, or human hair, or the skin of a beast before it has been dressed.

It is lawful for bootmakers and shoemakers, and such like, to derive a profit from hog's hair, but not from human hair.

It

It is odious to supersede the earnest of another, or to enhance the price of a thing, in order to raise the market.

It is odious to sell a child for a slave, and thereby separate it from its near relations.

If a thing is of that nature, that it can be removed from one place to another, that is, that it be not of the nature of land, the sale or the gift thereof, will not be good till possession has been obtained: but the selling or giving of ground is good before that it is possessed.

Whatever things are measurable, or weighable, till they have been twice measured, or weighed, or counted; neither selling nor buying, nor giving, nor making use of them is lawful. This case occurs very frequently in business, and men pay no attention to it.

Delay is allowable in the payment of a debt on account of a purchase; but it is not lawful to delay the payment of borrowed money. If

a man buys a thing, and agrees to pay the price within an appointed time, till the time is arrived they cannot demand it from him. But if a person borrows from another ten direms for the term of ten days, it is lawful for the creditor to demand them on the same day.

Usury is when more than is allowed is taken for the use of any thing. As long as it is of wheat for wheat, barley for barley, or wheat for barley, that they take or sell more, it is allowable if at that time it pass from the hands of the seller to the buyer; but if it be not done immediately it is not allowable.

If one fruit is sold for two fruits; or one egg for two eggs; or one chicken for two chickens; or one date for two dates; it shall be lawful. And in like manner, if a master takes usury from his own slave or a Moslem, from a captive in the field of battle, it shall be lawful.

SELEM,

SELEM, *or the paying of Ready Money for Goods to be delivered at an after Period.*

Selem is lawful for things whose quality and quantity can be ascertained. The shortest term for *Selem*, should not be less than one month.

Selem for grain, and for manufactures, such as a dish, the basin of a scale, boots, a jug; or for chickens or eggs, shall be lawful. But *Selem* for melons, cucumbers, pomegranates, bullocks, hides, sheep, stacks of wood, jewels, or beads, is not lawful.

Selem is lawful for things that exist between the time of making the agreement and the expiration of the term. But if a thing which did exist at the time of making the agreement, does not exist at the arrival of the appointed term, it shall not be good. And in like manner if it doth not exist at the time of binding the *Selem*, but doth exist at the expiration of the term, it shall not be lawful.

SURETYSHIP.

Bail for appearance, and bail to answer a demand, are both lawful. If a person says, "I am surety for the person of such an one;" or he saith "I am surety for the life of such a person;" or he saith "I am surety for the peace of such person," it shall be good. But if he saith, "I will get acquainted with such a person," and then "I am answerable for making you acquainted with him," it is not good.

If any one is personal surety for a person at an appointed time, when the time is expired, he must produce the person; and if he doth not produce him, the judge shall imprison the surety, or allow him time to go and return in order to bring him from the place where he may be, and if that person disappears, so that it cannot be known what is become of him, the bail is ceased.

If the surety commits the debtor to a place where the creditor is able to make his demand, it shall be sufficient, unless the agreement was, that he should be delivered over at the Cazy's tribunal, in which case he must be delivered over there.

It is not lawful to take bail for *Hud*, or for retaliation.

If a person, without telling another, is surety for him, and the creditor seizes his effects for the suretyship, he cannot demand the effects from the debtor. But if he was surety by the consent of the debtor, and has paid the money, he can demand and recover damages from him.

T R A N S F E R *of a* D E B T.

Transfer is when a debt is removed from one and fixed upon another. It is lawful to transfer a debt with the consent of the person upon whom the debt is transferred, and the creditor, and of the original debtor.

The claim of the creditor upon the person from whom the debt has been transferred shall cease, excepting in two cases. The *first* is, when the person upon whom the debt has been transferred denies it, and makes oath, and the creditor hath not any witnesses. The *second* is, if the person, on whom

the debt has been transferred, dies insolvent. In both these cases, the creditor has recourse to the original debtor.

If any person lends on *Sefijet*, which is, if he sends goods from one place to be paid for in another, and they are lost on the road, the person who takes charge of them is responsible for the debt. It is odious to give this kind of loan.

The OFFICE of CAZY.

The most necessary qualifications in a Cazy are, that he be skilful, and practised in jurisprudence, be impartial, just, and orthodox; learned in the sayings of the Prophet, and conversant in the manners and opinions of the companions of the Prophet. A Cazy should also be a master of the usage and customs amongst men.

According to some of the learned, a Cazy who is a sinner, is not fit for his office. According to others, if in the execution of his office he is just, but afterwards commits sin, he shall be degraded. If a Cazy passes sentence through bribery, he shall
not

not be esteemed a Cazy; and the decree of such a person shall not be legal. And according to some of the learned, and the Imams of the sect of Shafei, the decree of an ignorant Cazy, or of a tithing man, is not good. But if an ignorant Cazy passes sentence conformably to the *Fetwa* of the learned, it shall be good.

It is not proper that a Cazy be hard-hearted, vindictive, tyrannical, or contumacious. And he must not be present at a convivial meeting, unless it be a general invitation to Moslems. He must not accept a present from any one, excepting those of his own relations of affinity and consanguinity, or from a person between whom and the Cazy presents had been used to pass, previous to his exercising the office of Cazy.

It is proper that a Cazy behaves equally to both parties, in complacency, although the suit be between a slave and his master. And it is not proper for the Cazy to please one of the parties by good words, or signs, or by furnishing him with arguments, or by shewing him kindness by message, or by joking or laughing.

It

It is best that the Cazy pass sentence in the mosque. If he passes sentence in his own house, and does not admit all persons, it is odious.

In the *Khafy* there is a tradition, that the Prophet has said, that if a plaintiff brings sufficient evidence before the Cazy, if he delays to pass sentence, he becomes an infidel; if he refuses he is a sinner, and shall be deprived of his office, and merits *Tazeer*.

When a right is proved before the Cazy, he shall order the defendant to restore to the plaintiff his property; and if he does not restore it, he shall imprison him, till it shall appear that he hath nothing. According to some of the learned, he shall imprison him for two, three, three, four, five or six months. And if the defendant is a rich man, and demurs in restoring the property, it is necessary that he undergo perpetual imprisonment.

In a case where a Cazy has passed sentence, after hearing evidence, and after that he saith, "I retract my sentence;" or he saith, "I have discovered confusion in that evidence;" or he saith, "I have abolished my sentence;" or he saith, "I was
" mis-

“ mistaken in my opinion,” they shall not regard these words of the Cazy; but the first sentence shall continue.

It is not lawful for a Cazy to appoint a deputy, without the permission of the king; and if, by the permission of the king, he has appointed one, he cannot dismiss him, he shall be a deputy on the part of the king.

The sentence of a learned and wise woman is good; excepting in cases of *Hud*, or retaliation.

If two litigants appoint an honest man arbitrator between them, and he passes a legal sentence, it shall not be lawful for the Cazy to annul it. But it is not lawful to appoint an arbitrator in cases of *Hud* or retaliation.

The sentence of a Cazy to the benefit of his mother, father, wife, children, or their children, shall not be good, but sentence to their prejudice shall be lawful.

TESTI-

T E S T I M O N Y.

It is a religious duty to give a true testimony if the plaintiff requires it; and if the witnesses do not give true testimony, or conceal it, they shall be sinners. But in evidence for *Hud*, it is best that they conceal it. In *Hud* for adultery, four witnesses are required; and in *Hud* for false accusation, and for wine, and for retaliation, the evidence of two men is required. Matters concerning property, and marriage, and divorce, and of attorneyship, and of wills, two such men are also required, or one man and two free women. In a matter whereof men are not competent judges, such as testimony of the birth of a son, signs of virginity, or some defects that are found in hidden members, the evidence of one woman is sufficient. It is necessary that the Cazy pass sentence on the testimony of a person who is of sound mind, adult, and religious; and that he hesitate upon the testimony of a sinner.

To give testimony from hearsay, is admissible in six cases; 1st. in corroborating proofs of genealogy; 2d. of death; 3d. of marriage; 4th. of possession; 5th. of the jurisdiction of a Cazy; 6th. regarding
the

the origin of any religious foundation. In these six cases, although they have not been seen, when testimony is given from hearsay, it shall be good.

Neither the evidence of a blind person, nor of one who has suffered for false accusation, nor that of a son for the benefit of a mother or father, nor the reverse, are lawful. Nor the evidence of a grandson for his grandfather, or the reverse; nor the testimony of a husband for the benefit of his wife, or the reverse; nor the evidence of a master for the benefit of a slave, or a *Mekatib*. Neither are the evidences of any of the following to be listened to; of an hermaphrodite; or of one who mourns for hire; or of a public singer; or of him who drinks forbidden wine; nor of an usurer, or of one who plays at dice, draughts, or chess; nor of him who neglects his prayers; nor of him who eats on the pathway; and likewise the testimony of a *Zimmi* * against a Mollem, is not to be admitted.

The evidence of a brother, of a nephew, of a father-in-law, of a sister-in-law, of a son-in-law, of an enemy, of an eunuch, of an hermaphrodite,

* A Christian or a Jew,

of a foster-father, or foster-mother, or that of an uncircumcised person, are lawful. The testimony of a *Zimmi* against a *Zimmi*, or of a *Herby* * against a *Herby*, is good. And the testimony of a *Moslem* against a *Zimmi*, or a *Herby*, is good. But the testimony of a *Herby* against a *Zimmi* shall not be good.

A T T O R N E Y S H I P.

Attorneyship, is the act of committing a business to the care of any one. Attorneyship in claim and law-suit, is good without the consent of the antagonist. If the plaintiff be sick, or is absent for the space of a journey, or is a modest woman who is not used to go out of her house to the Cazy's tribunal, provided they appoint a person their attorney, it shall be good although the antagonist is not satisfied therewith.

Attorneyship in demand of *Hud* or *Tazeer* is not good without the presence of the constituent.

The appointment of a *Vakeel* (or attorney) by a youth of sound mind, or by a slave who is of sound

* An hostile Infidel.

mind, for buying and felling, and for other purposes, shall be good.

If the constituent dismisses a *Vakeel*, he shall be dismissed, if he has been apprized of his dismissal. If the *Vakeel* apostatizes and joins the army of the infidels, he becomes thereby dismissed. But if a *Vakeel* is not apprized of his dismissal, he shall in such case be *Vakeel*, and his acts are valid.

C L A I M S.

The plaintiff is he who maketh claim; and the defendant is the person upon whom the claim is made.

A claim is established when at the time of making it, the kind and the quantity of the thing is proved. If the thing is existing with the defendant, the judge shall use severity with him till he produces it; after that he shall hear the suit.

In claim of land it is stipulated, that they particularize the limits thereof, and that they make

mention of the persons whose grounds adjoin thereunto. If they ascertain the boundaries on their sides it is sufficient; but if they can only ascertain the limits on two sides, it is not enough.

Whenever there is a claim, the judge shall require evidence from the plaintiff; and if the plaintiff hath not any evidence, it is incumbent on the defendant to make oath.

A Moslem shall swear by the Lord of might and glory, and shall not swear divorce and manumission. But if the plaintiff maketh great lamentation, and saith "My comfort is on an oath of divorce and manumission," it shall be lawful that he make oath of divorce and manumission.

A Jew shall swear by God who sent the Pentateuck to Moses. A Guebre shall be sworn by God who created fire. An Idolater they shall swear by God who made heaven and earth.

If the plaintiff brings witnesses after that the defendant hath sworn, they shall also be heard.

If the defendant answers the plaintiff, and pleads that the thing is a deposit with him, and produces evidence thereof, the plaintiff's claim shall not be admitted. But if the plaintiff proves that the thing was stolen from him, then they shall not listen to the defendant's plea of deposit.

If two persons claim one thing under two dates, and establish their respective claims by witnesses, it shall be given to him whose date is earliest: except it be for a horse, or any other beast of burthen, then he who first lays hold of the bridle shall have the preference. And for a garment, whosoever first lays hold of the sleeve.

CONFESSION *and* AGREEMENT.

Any confession made by a free man, who is found in mind and adult, is good in law. The confession of a child and of a slave, in a matter of trade, without the consent of the master is not good; but in cases of *Hud* and retaliation, the confession of a slave is lawful.

If

If any one agrees to give dates in a basket, or wheat in a sack, it shall be incumbent on him to give the basket with the dates, and the sack with the wheat. But if he agrees to give a horse, or an ox, or any other beast that is in a stable, it is not incumbent on him to give the stable also. If he agrees for a ring, the setting is necessarily included. If he agrees to give a sword in a scabbard, it is incumbent on him to give the scabbard and the sword belt. And if he agrees to give a garment in a budget, it is incumbent on him to give both the garment and the budget.

If he makes a confession on his death-bed for the advantage of a part of his heirs, it shall be of no effect; unless the rest of the heirs consent to it.

If any one agrees to give a thing, or makes an oath, and adds the words, "If it please God," he is not bound to perform such oath or promise.

C O M P R O M I S E.

Compromise is a mutual agreement, that puts an end to litigation.

Compromise

Compromise may be made by assent, or by silence; and it is allowable after having refused it.

Compromise is allowable in claims for property; or for the rent of a house; or concerning marriage; or in matters relative to servitude.

Compromise in a claim of *Hud* is not lawful, because it is the cause of God. Neither can a person who kills another, although by accident, make peace for himself without paying the price of blood.

If a person forcibly takes away a man's garment, or his slave, and the price of the slave or of the garment be ten dirhems, it shall be lawful for him to compromise the affair for fifteen dirhems. In like manner, if the person from whom it has been forcibly taken is reconciled by receiving any thing in lieu, it is also lawful.

If a man appoints a Vakeel, that through him he may make a compromise, it shall be good in such manner as the Vakeel makes it, and the constituent shall become responsible, and not the Vakeel, unless

less he be security, in which case he makes himself answerable.

It is necessary that a trustee do keep the deposit himself, or give it to a person who is of his family; but if from the dread of fire he gives it to a neighbour, or at the time of shipwreck throws it into another vessel, and it is thereby lost or destroyed, he shall not be answerable for it.

If two persons deposit a thing, the trustee shall not deliver it to one unless both are present.

If an adversary at law demands a thing from a trustee, who at the time is able to deliver it, and refuses to do so, if afterwards he says, "It is lost," he shall not be heard, but be made responsible for it.

BORROWING *and* LENDING.

It is lawful to ask a loan; and to give it is optional.

If

If any one lends ground, that it may be planted with trees, it is lawful for him to resume it whenever he pleases, upon saying to the master of the trees, "Fell your trees, and carry them away."

If any one lends ground to be cultivated and sowed with grain, he cannot resume it, till the crop is reaped.

The expence incurred in sending back a borrowed thing, is chargeable upon the borrower.

If a borrowed horse, or any cattle, be sent to the stable, though not formally delivered there to the owner, yet the borrower shall not be any longer accountable for it. But if a horse, or any cattle, be taken by force, or is a deposit, and is sent to the stable, without being formally delivered over, the demand shall remain.

It is not lawful to give pledge, or hire, for any thing borrowed.

G I F T S.

The gift of a free man, who is of sound mind, adult, and the proprietor thereof, shall be good; and the whole shall be possessed.

If any one gives a thing to a child, and its guardian takes possession, it shall be sufficient.

If a person takes back a given thing, it is lawful, but odious.

In seven cases a given thing cannot be taken back: 1st, When ground is given, after which, on that ground a garden is planted, or a house built: or if a lean beast is given, and it afterwards becomes fat. 2d, If either the giver or the person to whom the thing is given dies. 3d, If any thing has been given in exchange. 4th, If between the time of giving the thing, and demanding it back again, it shall have passed into other hands. 5th, Whatever is given between man and wife. 6th, Whatever relations of consanguinity give amongst one another. 7th, If the identical thing is destroyed. In these seven cases, there can be no resumption.

If

If a man threatens his wife with blows to make her resign her dower, and it is proved that he had then power to strike her, such resignation is not good.

If any one gives away a female slave who is pregnant, without mentioning her burthen, it is nevertheless included ; exception would be absurd, therefore the slave with the child becomes his property.

A L M S.

Alms resemble a gift, consequently the *Fakeer* without possession, shall not be proprietor, in like manner as a gift without possession is not good. But after possession of alms there cannot be resumption.

H I R E *and* R E N T.

The hire of a washerman, and of a taylor, for ordinary business becomes due, as soon as they have finished their work. But if extraordinary dispatch is required, they must be paid beforehand. The rent

of a house or of ground may be demanded every day by the owner. And the hire of a baker, after that the bread is drawn out of the oven. And the hire for any thing that is eaten with bread may be demanded after that it is taken out of the pot. The hire of a brickmaker is due, immediately upon his setting up the bricks to dry.

To hire ground for cultivation is lawful, if the person explains what he shall sow; or if the proprietor of the land says, "Cultivate what you please."

Giving hire to a groom for helping a horse in covering a mare; or taking hire for calling to prayers; or for exhorting to prayers; or for fingering; or for weeping, are not lawful. And also taking hire for a stallion; and taking hire for all kinds of games, are unlawful.

It is lawful for a nurse to take hire for giving milk for a certain time. It is incumbent on the nurse to eat food that will agree with the child's constitution.

If

If a cloth is lost from the house of a dyer, or of a washerman; or if an ox be lost from a herdsman, or a goat from a shepherd, and it is proved that he had been negligent in keeping, he shall be obliged to pay the full price. The *Fetwa* on this question is, “That in every case, compromise shall be made for half of the price.” This tradition is written in the *Fetawy Serajy*. And in the *Mozmerat* it says, “If a thing is gone from him, “by an accident from which he was not able to “preserve it, such as being burnt by a violent fire; “or if he can prove that it has been lost by the “fraud of another, he shall not be responsible.” This tradition is in the *Hedyah*. If a thief has taken it away, or any one has taken it by force, in these cases, in the opinion of Imam Abu Yusef Cazy, and of Imam Mohammed Hassan Shibany, he shall be responsible in the whole price. And since in this age dishonesty and falsehood are so diffused, it is best that the Cazy pass sentence according to the opinion of those two Imams, that injury may not be common to mankind. This well-known tradition is written in the *Sherb Hedyah*.

MEKATIB SLAVE.

A *Mekatib* slave is he whose freedom has been settled for an appointed sum. The ordinance regarding him is, that if he pays the sum according to stipulation, he shall become free ; and if he shall not be able to pay the sum, he shall afterwards be like an absolute slave, such agreement being thereby dissolved.

When a *Mekatib* dies, after having paid the sum, or a slave who has been liberated dies, his estate shall go to his relations, if they are free, and not to his master. But if none of his relations are free, the estate shall go to the master, or the heirs of the master.

It is lawful for a *Mekatib* to sell and buy, and to go a journey ; although his master had stipulated, that he shall not go out of the city.

If the master of a *Mekatib* dies, the agreement shall not be broken, and the sum that was stipulated in the lifetime of the master shall be paid to his heirs.

THREAT-

T H R E A T E N I N G.

The law requires in proof of a threat, that the threatener be able to put his threat in execution; and that the other person is fully persuaded he will do what he menaces.

If the threatener says to another man, " Sell
" this thing, or else I will kill you;" or " I will
" beat you severely;" or " I will imprison you
" for a long time;" then if he sells it, the sale
shall not be good; whenever he requires it,
he may return the money and take back his
thing. But if at the time of taking the money
he is persuaded, and willing, the sale shall be good.

If the threatener says to a person, " Eat hog's
" flesh;" or, " Eat carrion, or blood;" or, " Drink
" unlawful wine, or if you do not do it, I will
" confine you, or I will beat you," it shall not
be lawful to eat thereof. But if he in this case
threatens to kill, or to cut off a member, it is in-
cumbent on him to eat; for if he suffers for not
complying, he is a sinner.

If

If any one threatens another, in order to extort blasphemy, or to injure the goods of a Moslem, and says that if he doth not speak blasphemy or injure the goods, he will kill him, or cut off one of his limbs, it is better that he suffer himself to be killed and die a martyr, than injure the goods. If he injures the goods or speaks blasphemy, and in his heart confesses the faith, it is permitted that he do it, he shall not be an infidel; but it is incumbent on him to make amends for the goods.

If one says to another, "Kill such an one, or else I will kill you;" if he kills him, the claim of blood shall be made upon him who gave the order, and not upon the murderer.

If any one threatens another, to the end that he may declare a divorce, or liberate a slave, the divorce shall be good, and the slave shall become free; and it shall be incumbent on the threatener to pay the dower of the woman, and the price of the slave.

It is lawful to hinder one who is not the proprietor, from possessing the goods of another.

It

It is lawful to prevent a person who is insane, from possessing his property.

A minor's taking possession of goods without the consent of his guardian; or a slave without the consent of his master, is not good. Obeying the words of a minor, of a slave, or of an handmaid, in bringing a present or carrying it away, or in giving permission in business, is lawful.

If a minor agrees for goods; or divorces his wife; or liberates a slave, it shall not be good. And the ordinance regarding a madman in these cases is the same.

The agreement of a slave, for goods, is good, and after his manumission, it is lawful for the creditor to demand it, and take it. And if a slave confesses an action that merits *Hud* and retaliation, he is answerable for it when he gets his freedom.

VIOLENCE *and* OPPRESSION.

The person who forcibly takes possession of any
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thing belonging to another, is called an oppressor; and the ordinance regarding him in this world is, to give it back, as an indispensable duty, and the price of it, if it is consumed. And if he does not make restitution in this world, he shall suffer punishment hereafter. The Lord defend me from him!

If the oppressor says "he has lost the thing," the judge must confine him, that if it is in existence he may bring it. When it is discovered that it is consumed, and he has something like unto it, as wheat, barley, and such like, the price shall be made according to the day of the demand. And if he has not its resemblance as a garment, cow, or sheep, the price of the day of violence becomes incumbent.

If the oppressor finds the thing after paying the price, they shall not take it from him.

In ascertaining the price of a thing, the word of the owner is to be credited if he brings witnesses. But if there be no witnesses, the oath of the oppressor shall be admitted.

HUK SHUFAH, or the Right of Neighbourhood.

Shefah signifies the joining of one thing to another; and here it means, when the land of another on account of partnership or vicinity, joins to his own ground, and he takes it by the right of *Shefah*, or neighbourhood.

In the right of neighbourhood, the first person is he who hath a share in that land; next the person who has a partnership in the rights of the land, such as a road, or part of a pool of water; afterwards the right of neighbourhood belongs to a neighbour, who lives close to the house.

If the claimant of the right of neighbourhood gets intelligence that the land is going to be sold, the stipulation is that he take witness in an assembly, and say, "Be ye witnesses that I am claimant of the right of neighbourhood." If the land after being sold is not delivered over to the buyer, he shall go to the feller, and take witness. And if the buyer has taken possession, he shall go to the buyer and take witness. After that, if for some years he doth not

make pretension, the right of neighbourhood shall not cease. If he gets intelligence of the sale of the land, and doth not take witness after the manner aforesaid, the right shall be annulled.

If a person wants, that in selling land, it shall not be incumbent on him to fulfil the right of neighbourhood; if he retains a *Guz* of his own land on the side of the ground of the claimant, and sells the rest, then the right of neighbourhood ceases. Another way is, if he gives the claimant something by way of compromise, that he shall not claim the right of neighbourhood, the claim shall cease; and whatever he has given, it is lawful for him to take again.

A G R I C U L T U R E.

It is lawful to give land for cultivation, if the land is fit for cultivation; and the owner of the land and the cultivator are both sound in mind and adult, and the term be known, and it be made clear which of the parties shall find the seed; and it be likewise specified what shall be the share of him who doth not furnish

furnish the feed. With these stipulations, it is lawful that he give the land to any one for cultivation.

If the land and the feed are both found by one party, and the cattle and the labour by the other side; or the land by one party, and the feed, and the cattle, and the labour by the other, it is lawful.

But if the land and the cattle belong to one side, and the feed and the labour are found by the other party, it is not lawful.

It is incumbent on each side to pay his share of the necessary expences of cultivation, such as hire for reaping the harvest, and for carrying the grain, and for threshing, and for fanning it.

KILLING *and* MAIMING.

If any one kills another designedly, whom it is never lawful to put to death *, with a weapon of iron, or with a stick armed with iron, or with a large stone, or with fire, they shall also put him to death.

* That is, if he is not an Heathen.

If any one discharges an arrow at a butt, or at a warlike infidel, or at an ox, or at game, and it strikes a man, so that he is killed, it is incumbent on him to pay the price of blood, and to make expiation; and this kind they call inadvertent murder. The expiation for killing inadvertently, is the manumission of a Moslem slave; and if he is not able to liberate a slave, fasting for two months successively. Giving victuals and cloaths in expiation of murder, is not lawful.

The complete price of blood is an hundred camels, twenty-five turned of one year, twenty-five that are turned of two years, twenty-five that are turned of three years, and twenty-five that are turned of four years of age. Or else one thousand dinars of gold. Or ten thousand direms of silver. And the price of blood for a Moslem and a *Zimmi*, is the same.

They shall kill a freeman for the murder of a slave, and a Moslem for a *Zimmi*, and a man for a woman, and a grown person for a child, and a sick person for a healthy person, and a person who can see

fee for a blind person, and a cripple for a sound person, and a person who is of sound mind for a madman, and a child for the murder of a father or mother. They shall not put to death father or mother, grandfather or grandmother, for the murder of a child or grandchild. And in like manner a master shall not be put to death for killing a slave, a *Medebir* or a *Mekatib*.

If any one draws a sword on a Moslem, they shall kill him, and no demand shall be made upon the person who kills him.

If any one cuts off the hand of another at the wrist, or at the elbow, or cuts off his nose, or an ear, it is necessary that they cut off the like parts from him.

If any one deprives another of the sight of an eye, so that it is perfect in appearance, the mode of retaliation is this; they shall heat a mirror *, and hold it before the eye of the criminal, covering his other eye with wet cotton, that the heat may not affect it.

* A mirror of steel, which they heat by friction.

If any one pulls out a tooth of another, and another tooth comes in that place, nothing shall happen to him. But if another tooth does not grow up, it is incumbent on him to pay five hundred lawful direms.

If a person strikes a pregnant woman on the belly, and she miscarries, let them see if the child is dead, when five hundred lawful direms are incumbent; but if the child is born living, and then dies, the full price of blood becomes necessary.

If a slave maims any one by accident, it is incumbent on the master to deliver him up; but if he pays his price, and retains the slave, it shall be allowable.

If a horse, or any beast, tramples on a thing or on any person, or bites or kicks any one, if he has been standing in the middle of the road, then in all the cases here mentioned, the master of the horse, or other beast, shall be responsible to the prosecutor.

If gravel, or a thorn, or a stone, be flung by the hoof of the horse, or other beast, against the eye of
any

any one, and put it out, or soil his garment, the owner of the beast shall not be answerable.

If a person is found murdered in a quarter of a town, and the murderer is not known, they shall swear fifty men, inhabitants of that quarter, that they have neither committed the murder, nor know the murderer.

If they take the oath, the price of blood shall cease to be demanded from the people of that quarter; but if they do not take the oath, the price of blood shall be divided amongst the inhabitants thereof. If in that quarter there be not fifty men, they shall administer fifty oaths to as many as can be found. To children, madmen, women, and slaves, the oath is not administered. But if there are no marks of violence on the dead person, it is not necessary that the inhabitants of the street make oath.

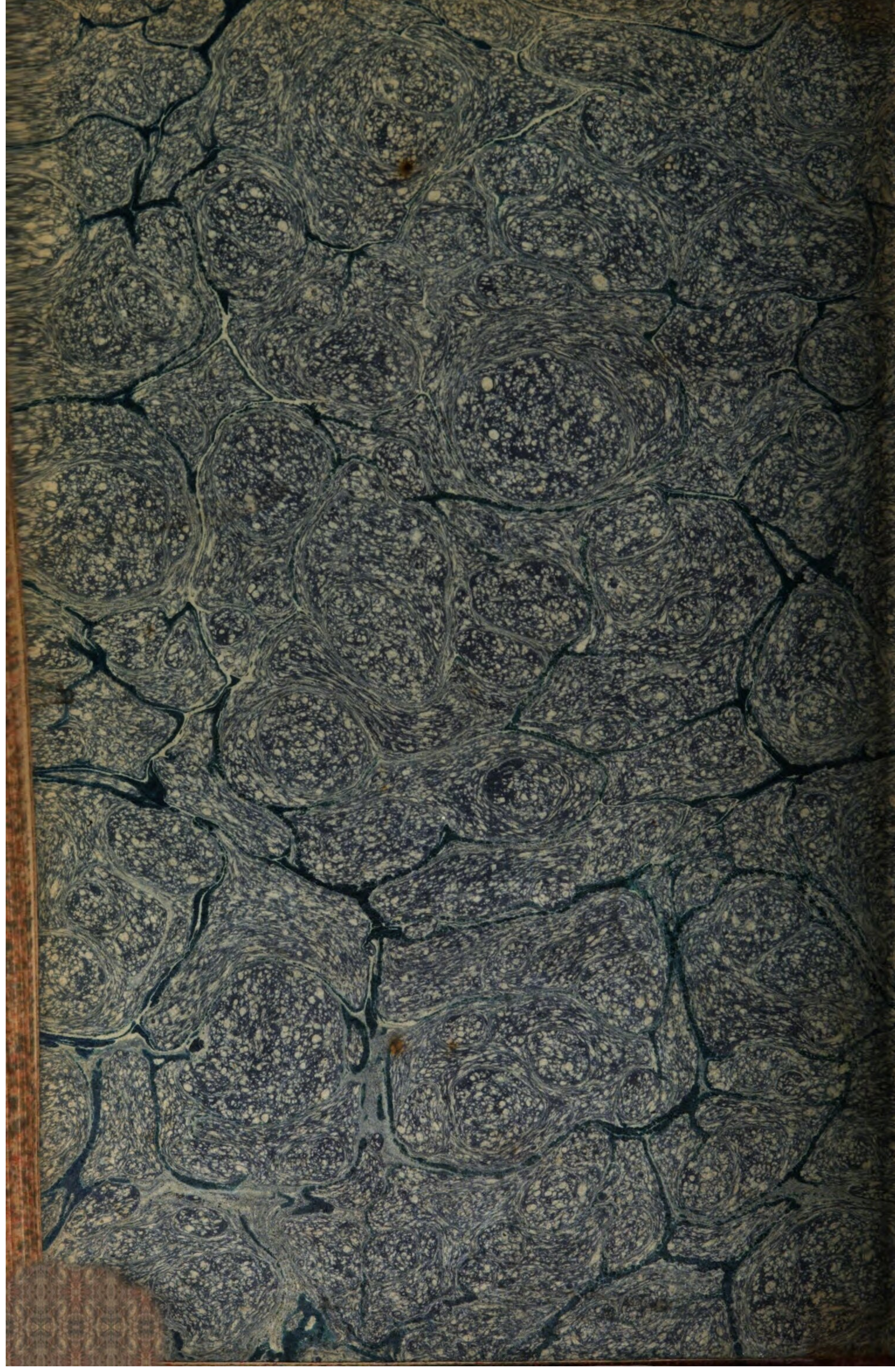
If a child, or a madman, or a woman, kills any one designedly, they shall not kill either of them, and the price of blood shall become incumbent on their *Akylah*. The *Akylah* is the person

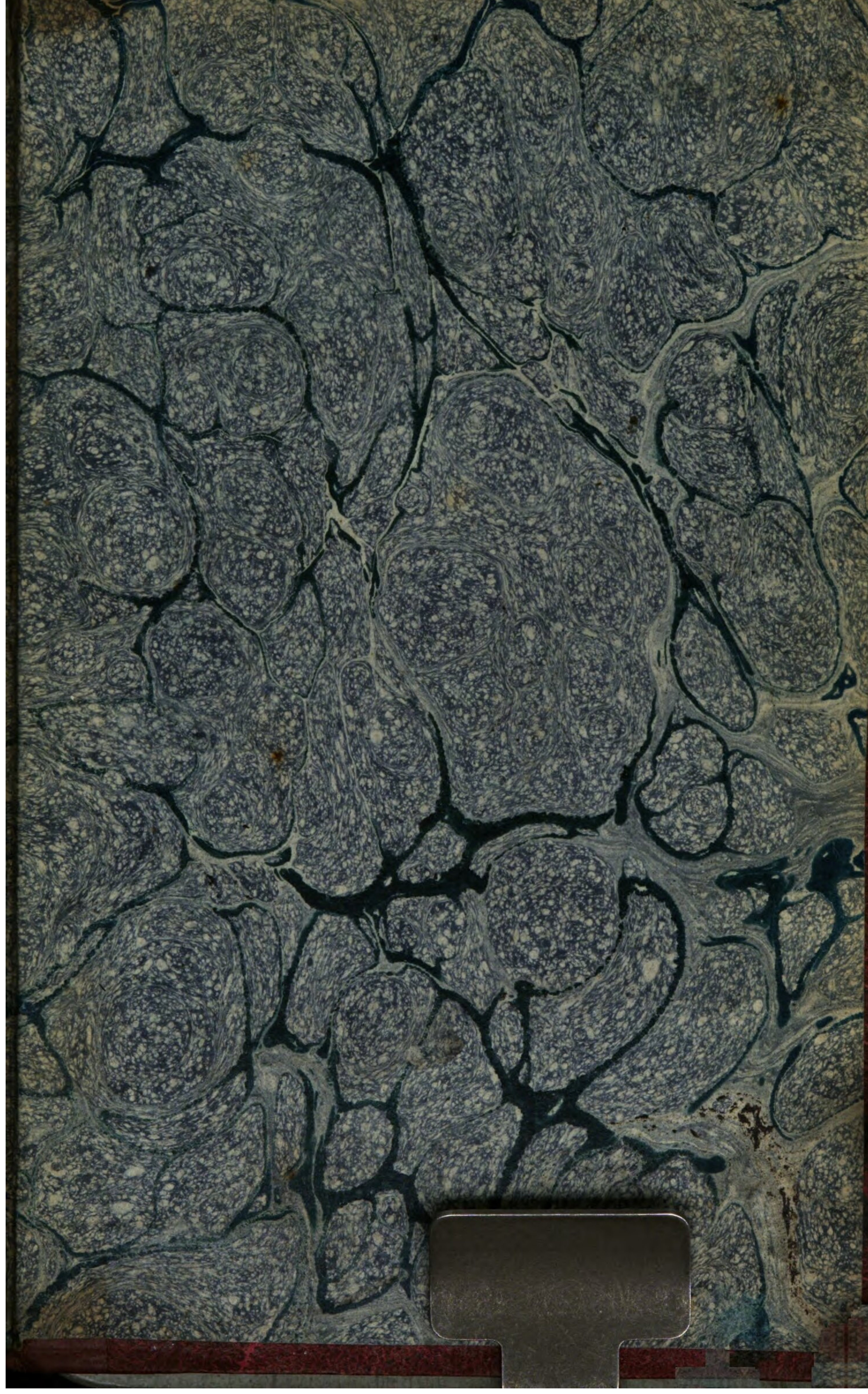
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who is responsible for the crime of another. Let them see if the murderer belongs to a person who is responsible for his actions, for then it is incumbent on the *Akylah* to pay the price of blood. If the murderer has not an *Akylah*, it shall be incumbent on the family of the murderer to pay the fine; and if the family consists of a small number of persons, and they are not able to pay the price of blood, then they who are near of kin to that family, shall take part of the mulct, and in the distribution of the price of blood, the murderer is included.

T H E E N D.







Gladwin, Francis

An epitome of Mohammedan law

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